

Status of the ICC and U.S. Policy

Fall 2003 Update

Bilateral Immunity Agreements

- **President Bush issues partial waivers to NATO accession countries**

On November 21, President Bush allowed some military aid to be provided to Bulgaria, Estonia, Latvia, Lithuania, Slovakia, and Slovenia. Even though they had all refused to conclude a Bilateral Immunity Agreement (BIA) with the U.S., the President used his power under the American Servicemembers' Protection Act (ASPA) to allow military aid to be given to these six countries if it is related to their integration into NATO or the operations in Iraq and Afghanistan. This is a significant shift in U.S. policy, as it is the first time waivers have been given to countries that have refused to sign a BIA. Although the Bush administration is beginning to realize the political price of its opposition to the court, 25 U.S. allies are still having military aid withheld due to their support of the ICC, even though the President could waive these restrictions. More information is available at www.globalsolutions.org/programs/law_justice/icc/bias/bias_home.html.

- **Senate Foreign Relations Committee approves ASPA amendment**

On November 6, the Senate Foreign Relations Committee unanimously approved an amendment to ASPA, which would exempt NATO accession countries from U.S. military aid sanctions (currently this would apply to seven countries: Romania, Bulgaria, Estonia, Latvia, Lithuania, Slovakia, and Slovenia). The amendment still needs to be passed by both the House and Senate before it would take effect. It is unlikely that this will move forward, however, since the President has already issued a waiver for one country (Romania) and partial waivers for the other six.

UN General Assembly

- **ICC references in UN resolutions increasing, despite U.S. opposition**

The UN General Assembly has recently passed numerous resolutions with references to the ICC, in spite of U.S. objections. On November 28, the UN passed a resolution on the Rights of the Child that recognized the ICC as a mechanism to prevent human rights violations, with a vote of 129 in favor and only one against (the U.S.). On December 1, the UN passed a resolution regarding the situation of human rights in the Democratic Republic of the Congo that called upon the Congolese government to cooperate with the ICC, with a vote of 74 in favor (including the U.S.), three against, and 85 abstentions. The dismissal of a U.S. proposed amendment to excise any mention of the ICC in the agreement forced the U.S. to vote in favor of the resolution. ICC supporters in the UN also introduced a resolution to draft a consensus on a UN-ICC relationship agreement. The U.S., unhappy with the pro-ICC language, threatened to call a vote, but the resolution's supporters responded by threatening to strengthen the resolution even more. Since the resolution would be approved regardless of U.S. opposition, the U.S. allowed the consensus to pass. However, the U.S. is still expected to fight any reference to the ICC in Security Council resolutions, over which it has a veto.

Court Update

- **Complications in investigation of atrocities committed in the Democratic Republic of the Congo**

The ICC Prosecutor has faced complications in his attempts to initiate an investigation in the Democratic Republic of the Congo. No State Party, including the Congo, has referred the case to the ICC as the Prosecutor had hoped. This is partly due to the reluctance of other countries to intervene in the ongoing peace process in the Congo. Additionally, there is inadequate security in the Ituri province to protect investigators and witnesses. It is also likely that the U.S. will limit the ability of UN peacekeepers to cooperate with the ICC's investigation. Therefore, it may take the Prosecutor another year to finish his investigation before he can begin issuing indictments against those responsible for the atrocities committed.